

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA)
)
v.) No. 4:17CR00293-45 BSM
)
MARCUS O. MILLSAP)

UNITED STATES' RESPONSE IN OPPOSITION TO MOTION TO STAY FINE
PENDING APPEAL

The United States of America, by and through Jonathan D. Ross, United States Attorney for the Eastern District of Arkansas, Liza Brown and Stephanie Mazzanti, Assistant United States Attorneys for said district, submits its response to defendant Marcus O. Millsap's Motion to Stay Fine Pending Appeal.

Federal Rule of Criminal Procedure 38(c) “leaves the determination as to whether to issue a stay and under what conditions to the sound discretion of the trial court.” *United States v. Koestner*, No. 4:08-CR-00093-RP-CFB, 2010 WL 2595300, at *1 (S.D. Iowa June 22, 2010), *aff’d*, 628 F.3d 978 (8th Cir. 2010) (citing *United States v. Restor*, 529 F. Supp. 579, 580 (W.D.Pa. 1982) (“A district court may grant a motion to stay the execution of a fine or a probationary sentence if in the exercise of its discretion it concludes that such a stay is proper.”); *United States v. Tallant*, 407 F. Supp. 896, 897 (N.D. Ga. 1975) (“[T]he question of whether or not to stay a fine is committed to the sound discretion of the court” (citation omitted))). “When considering such a stay, the Court must consider the legal merits of the appeal and state its reasons for either issuing or denying the stay.” *Id.* (citing *Restor*, 529 F. Supp. at 580 (citations omitted)). Millsap has failed to articulate any error the Court made in assessing the fine or mandatory special assessments. The PSR reflects more than sufficient assets for immediate payment of these obligations, and if there

is a reversal by the Eighth Circuit, the funds may be returned. *See United States v. Biernat*, No. CRIM.02127(2)ADM/AJB, 2003 WL 21246034 (D. Minn. May 27, 2003).

In the alternative, if the Court is inclined to grant the requested stay, the United States requests that the Court order the defendant to deposit all of the fine and costs into the district court's registry pending appeal. *See* Fed. R. Crim. P. 38(c); 18 U.S.C. § 3572(g).

Respectfully submitted,

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